ESSAY

The University in the Manner of Tiananmen Square

By WILLIAM VAN ALSTYNE*

The university academic council assembled in the room where it customarily met. The agenda had been distributed well in advance. Alternative formulations of a new university offensive verbal conduct rule was under consideration this afternoon. The council would finally decide the appropriate standard to submit to the Board of Trustees. These were the choices to be discussed and voted on today:

> RULE I. *No member of the faculty, student body, or staff shall engage in any verbal conduct that renders the environment on campus, or some part thereof, offensive.*[1]
>
> *1ST ALTERNATIVE* RULE I. *No member of the faculty, student body, or staff shall engage in any verbal conduct that renders the environment on campus, or some part thereof, offensive. This rule shall apply, however, only if the verbal conduct is of a sexual nature, and not otherwise.*
>
> *2ND ALTERNATIVE* RULE I. *No member of the faculty, student body, or staff shall engage in any verbal conduct that renders the environment on campus, or some part thereof, offensive. This rule shall apply, however, only if the verbal conduct is of a sexual or religious nature, and not otherwise.*
>
> *3RD ALTERNATIVE* RULE I. *No member of the faculty, student body, or staff shall engage in any verbal conduct that renders the environment on campus, or some part thereof, offensive. This rule shall apply, however, only if the verbal conduct is of a sexual, religious, or racial nature, and not otherwise.*

---

* William R. and Thomas C. Perkins Professor of Law, Duke University. [With thanks to Daniel Defoe, for his useful original essay, *The Shortest Way With the Dissenters: Or Proposals for the Establishment of the Church* (London, 1703); and also to Catherine MacKinnon, Richard Delgado, Mari Matsuda, Charles Lawrence, Thomas Grey, and Cass Sunstein for their highly instructive views.]

1. *See also* RULE II ("Any member of the university community who engages in any verbal conduct contrary to Rule I shall be subject to suspension, dismissal, or other appropriate sanction as the Committee on Offensive Verbal Conduct shall decide.").

4TH ALTERNATIVE RULE I. *No member of the faculty, student body, or staff shall engage in any verbal conduct that renders the environment on campus, or some part thereof, offensive. This rule shall apply, however, only if the verbal conduct is of a sexual, religious, racial, or other nature reflecting an improper and unreasonable attitude toward others according to the common standard of the university community, and not otherwise.*

A Short History of How the University Came to Adopt the 4th Alternative to Rule I

i.

The rule first proposed for approval and vote was the rule simply forbidding offensive speech. This, of course, was the essential idea of RULE I. The general purpose of the rule was simply to make the campus a more pleasant environment for those participating in the university, to create a hospitable environment in which to carry on work—whether as students, faculty, administration and staff, or as regular and valued employees.

But this original, broadly-framed proposal was quickly dismissed as, at best, well-intended but nevertheless poorly conceived. The idea was too sweeping. Could complaints be brought and charges pursued before a committee empowered to put anyone at risk insofar as the committee were satisfied, after investigation and hearing, that one's "verbal conduct" did—in *some* fashion—seriously offend others (and so, as to them, render the environment, or some part thereof, offensive)? Surely, offensiveness *per se* could not be an appropriate test. This was vastly too broad and altogether too chilling for anyone's taste. It reached all "verbal conduct" rendering "the environment" on campus, or any part of the campus, "offensive." But what would that mean? An "offensive environment," it was asked, for example, to *whom*? To students attending a particular class? To others, not in that class, who learned what was said by a faculty member or other students? Not offensive to students (or not only to students), but offensive to other faculty, to trustees, to alumni on campus, to administrators, or to staff? "Offensive," moreover, *in what way*? Merely in one's choice of particular terms?[2] In the very nature of the information imparted?[3] Or, rather, the conclusions summarized or offered as opinion, in or out of class? Or "offensive" merely in the apparent

2. E.g., graphic, rather than euphemistic, usages or depictions?

3. Information, for instance, some might deem inappropriate to present (due to its offensive implications), like tabulations of SAT scores by race, or tabulations of HIV infection rate variations correlated by specific sex practices of various groups?

callousness of one's values as such—values affronting the values of others on campus, or on some part of the campus where they worked?

The entire notion of proceeding in this way was hopeless. The implicit censorship of the proposal, and the standard it employed, were too much like the chilling fatwa issued worldwide on Salman Rushdie for having authored his religiously offensive (blasphemous) work of fiction, THE SATANIC VERSES—a work condemned and an author sentenced to death for his offensive (mis)portrayal of the life of the Prophet. No member of the council was willing to accept any rule cast in terms so loose as to lend themselves to levelling the campus in any of these ways. The proposal as projected in RULE I was quickly tabled. The council turned at once to the first alternative proposal, hoping it would avoid most—perhaps all—of the problems compelling the council's decision not to recommend the original version of RULE I.

ii.

Initially, *1ST ALTERNATIVE* RULE I looked considerably more promising because it was so much more specific and narrow. It had come to the council as a concrete proposal from a special task force on sexual harassment. It had particular point because of the still recent (and disturbing) Clarence Thomas-Anita Hill hearings that nearly all had seen on network broadcasts. And it was given particular point, too, by the council's own understanding that some rule roughly of this sort was expected of the university under federal law. Titles VI and VII of the Civil Rights Act of 1964, as amended, and Title IX of the Educational Amendments Act of 1972, evidently required all institutions receiving any federal assistance to forbid sexual harassment. The proposal was designed specifically to meet that requirement, and in doing so it tried not to go beyond that specific concern. In contrast with RULE I, it was thus deliberately very limited; it would reach only offensive verbal conduct "of a sexual nature," and it took exact care so to say.[4]

In the course of discussion, however, the council came to understand that *1ST ALTERNATIVE* RULE I would put the university in a

4. *1ST ALTERNATIVE* RULE I: "No member of the faculty, student body, or staff shall engage in any verbal conduct that renders the environment on campus, or some part thereof, offensive. This rule shall apply, however, only if the verbal conduct is of a sexual nature, and not otherwise." (Note the comportment of this draft to the E.E.O.C. requirement, 29 C.F.R. § 1604.11 (1992), directing employers to "take all steps necessary," including "developing appropriate sanctions," to eliminate "verbal conduct of a sexual nature [having] the purpose or effect of creating an . . . offensive working environment.").

most awkward position—for what the rule left out. While the rule was initially well-received (it was taken for granted that it was meant principally to protect women on campus from being subjected to humiliating remarks, denigrative jokes, etc.), as now drafted it left out of account *religiously* denigrative or humiliating verbal conduct of a like sort (e.g., "jokes" about Jews). Evidently, these would not be treated in the same fashion as abusive verbal descriptions of women (or of men). Was this really to be so? It required but little discussion for the council to concede that the failure to include verbal conduct of a religiously aspersive nature was a mistake insofar as *1ST ALTERNATIVE* RULE I treated the humiliation of others by religion as of unequal concern (indeed, by its terms, of NO concern) as humiliation by sex. So to avoid that impression the council moved to *2ND ALTERNATIVE* RULE I.[5]

iii.

But the discussion about abusive or offensive "verbal conduct of a sexual or religious nature," now subject to the proposed rule, only made the council more sharply aware that the same point made as to religion applied with at least equal force to verbal conduct of a racially-aspersive (and offensive) nature as well. And how was one to feel about that? Was it to be true that offensive utterances (i.e., denigrative utterances) would be subject to complaint only if insulting toward others based on gender or religion? Was *racial* disparagement truly to be treated as *less* inappropriate on campus, or *less* subject to sanction (indeed, subject to *no* sanction at all)? How was that possible? The very idea was startling. Something was clearly wrong.

Several council members suggested that this must be a red herring. Though the new rule would, by its terms, reach only verbal conduct of a "sexual nature" (now amended to include religious disparagement), and only then insofar as it rendered the campus environment (or some part thereof) "offensive", and though the new rule admittedly did not apply to "racist" verbal conduct, it was false to claim that such behavior was somehow thereby in any way meant to

5. *2ND ALTERNATIVE* RULE I: "No member of the faculty, student body, or staff shall engage in any verbal conduct that renders the environment on campus, or some part thereof, offensive. This rule shall apply, however, only if the verbal conduct is of a sexual or religious nature, and not otherwise." (The council was well advised to make this adjustment in the proposed rule; a footnote accompanying the E.E.O.C. directive to employers, *see supra* note 4, declares that the "same principle" requiring them to take action against "verbal conduct of a sexual nature [having] the purpose or effect of creating an . . . offensive working environment" applies identically in respect to such conduct of a religious nature as well (and so, too, as to race). *See* 29 C.F.R. § 1604.11, n.1 (1992)).

be condoned. Presumably—this in answer to a sharp question—it was already subject to discipline by some other rule. If not (and the speaker conceded that there seemed to be no such specific rule), then assuredly it should be added, and added quickly, as it easily could be.

Several thought this surely must be right. In response to the first point, however, there seemed to be no pre-existing, adequate rule the previous speakers could point to. Moreover, whatever might have been thought in the past, it provided no reason to leave out offensive racial verbal conduct from the proposed rule, insofar as the council itself was now about the specific business of recommending what was to be *the* proper regulation of unacceptable offensive verbal conduct at the university. Additionally, as a member of the council observed—and this point seemed especially strong—in having already extended the rule to make clear that offensive verbal conduct of a religious nature was to be covered, to fail to include the same treatment of race could rightly be regarded as a callous inversion of priorities—an act of willful discrimination by the council itself. The point hung in the air, awaiting a satisfactory response.

iv.

But before the council even moved to a vote on *3RD ALTERNATIVE* RULE I[6] (as, by now, many had already been persuaded to do), the discussion had become increasingly awkward for others in the council. Prompted by the unexpected turn the more general discussion was taking, they had begun thinking of still other issues, and other analogies. By leaving out verbal conduct denigrating to others (and making the campus environment oppressive to them) by yet *other*, indistinguishable kinds of belittling depictions, remarks, jokes, or posters—because of physical characteristics ("cripples"?), sexual orientation ("faggots"?), or national origin ("the yellow peril"?), for instance,—indeed, by cordoning off only such verbal conduct as reflecting offensively on some characteristics but not others (age, sexual orientation, national origin, veteran status, obesity?), the rule was discriminatory in the bias of its restricted coverage: denying all others any standing to complain, and dismissing any complaint they might have as evidently of no equal worth—notwithstanding that this "speech" (this "verbal conduct") was belittling to them, notwithstanding that it reduced them to stereotype, and notwithstanding that it

6. *3RD ALTERNATIVE* RULE I: "No member of the faculty, student body, or staff shall engage in any verbal conduct that renders the environment on campus, or some part thereof, offensive. This rule shall apply, however, only if the verbal conduct is of a sexual, religious, or racial nature, and not otherwise."

subjected them to an offensive environment on campus or some part thereof. So what was the principle the rule sought to capture, after all? What did the council think it—the council itself—was actually about? How should the council frame a suitable rule neither overinclusive nor underinclusive of what "verbal conduct" was appropriate to forbid?

More members of the council stirred uneasily in their seats. The university surely must, they had thought, work in the best way it could to assert a clear substantive stance on the right way of thinking about gender, religion, and race. In large part, that very supposition was itself built into the rule. In large part, moreover, many understood this to be part of the very function of the university (was it not?)—to educate their students, their employees, and themselves on just such questions? Moreover, as already noticed, in some measure that position was obvious from the formulation of the rule the council already had previously (albeit tentatively) approved. And, whether or not all agreed that that was so—about the proper mission of the university—at a minimum it was already virtually settled by the council as being so to the extent that it would forbid "offensive" verbal conduct respecting characteristics of gender, religion, or race, so to ban these abusive and hurtful acts from prejudicing the environment. So much had already virtually been agreed to, had it not?

But was it true that the university had no equally determinable position on the "right" way of thinking, or expressing one's views, about *other* characteristics or differences? For example, about sexual orientation, or about age, or about national origin, or about economic class? But if not, then *why* not? How did it distinguish what it was prepared to do from what it was not prepared to do? In other words, on what basis would it be a mere Pontius Pilate[7] on these other things, when it was agreed on the things already proposed for the rule? In the face of baneful remarks belittling others for their sexual orientation, whether made to them or of them,[8] for example, would the university nonetheless refuse to consider the matter as of the same complainable sort as when baneful remarks of a religiously or racially aspersive sort were the object of complaint? Why should that be?

7. I.e., refusing to pass judgment.

8. Under the rule as it stood, it was the "environment" that mattered. It was not crucial that sexually demeaning expressions need be personally directed to a particular individual, for example, for certainly the display of sexually demeaning posters of women "as such" were meant to be reached under the rule as it now stood—and so, too, of course, in equivalent circumstances regarding race or religion as well.

And how would one account for the university's stance? *What was its principle?*

And, again, *why was it necessary*? The council had resolved that it would not leave some "verbal conduct" to the inadequate response of a mere "free speech" campus. So much as this was already settled and clear. If the university would no longer leave some to the mercy of the "free speech campus," but would so leave others, it needed to explain its principle "up front." It necessarily followed that the proper concern of the council, and the right object of the right kind of rule, was to explain its principle up front, to identify the metric of the rule and explain why certain offensive statements were forbidden and others not, to give a foundation—not a mere institutional *ipse dixit*—adequately distinguishing what offensive statements were forbidden from those statements not forbidden, regardless of their offensiveness, to distinguish mere bigotry (if that were the point of distinction) from what, though offensive, had value of some sort, on which account it would not be made the object of this rule (though it seemed to reflect other attitudes one might equally resent, equally feel offended by, equally believe to be wrong or demoralizing), as many might believe to be true of Salman Rushdie's THE SATANIC VERSES—which no university would, or ought to be, prepared to forbid. Until *that* task was done, moreover, *no* useful, *principled* rule could be adopted adequately distinguishing verbal conduct that would not be appropriate to forbid from that which the university would not tolerate or condone.

V.

The challenge laid down seemed to be worthy and fair to the council. In the course of the afternoon, it struggled at length to meet this challenge as best it could. In the end, however, the council could do no better than to adopt *4TH ALTERNATIVE* RULE I.[9] For even after elaborate further efforts to be more specific, it was agreed that nothing significantly more instructive or more specific could be done. The council's own discussion served principally to make clear what perhaps should have been obvious all along—that there was really no principle the council could state beyond "the principle" announced on

9. *4TH ALTERNATIVE* RULE I: "No member of the faculty, student body, or staff shall engage in any verbal conduct that renders the environment of the campus, or some part thereof, offensive. This rule shall apply, however, only if the verbal conduct is of a sexual, religious, racial, or other nature reflecting an improper and unreasonable attitude toward others according to the common standard of the university community, and not otherwise."

the face of *4TH ALTERNATIVE* RULE I, and, in fact, it did quite accurately reflect the operative standard after all else was said and done.

Predictably, as all agreed, not *all* "denigrative" or *all* "negative" depictions were uniformly thought appropriate to forbid. Even if expressed emphatically, they might be correct or, if not perfectly correct, at least "understandable," and thus not condemnable as offensive "mere bigotry" as such. Necessarily, that is, some offensive speech (i.e., speech offensive to some persons because, in their view, denigrating of them) was *not* to be forbidden, consistent with the council's rejection of original RULE I. A proper rule had to allow for this understanding. And *4TH ALTERNATIVE* RULE I did so, articulating the differentiating principle as crisply as circumstances would allow. A substantial number of council members shared the view, for example, that the European discovery and subsequent displacement of Native Americans, beginning with Columbus and San Salvador, could be described as "genocide." In keeping with that view, many likewise thought it not inappropriate—quite understandable, in fact—for Native American students to express themselves very aggressively about certain subjects, i.e., to speak aggressively about whites—of the "white man," and of "the white man's rape" of the continent, and "the white man's racism" as well. Oppositely, however, a denigrative description of Native Americans (as "aborigines," or as "backward peoples" with a "primitive culture") would not pass without notice. And, moreover, at the least they were quite prepared to vote for a rule sanctioning *offensive stereotype depictions of Native Americans if concretely carried into verbal conduct so to make some part of the campus an "offensive environment" for Native American students subjected either directly or indirectly to such affronts.* They were confident their colleagues were willing to do no less.[10]

Other members disagreed with this example (they thought it somewhat ill-chosen and subject to a good deal of uncertainty that their colleagues hadn't allowed for[11]), though they admitted that their

10. They suggested, moreover, that under the federal civil rights acts (and the E.E.O.C. regulation, *supra* note 4), the university might be in violation of the federal acts were it not so to act and were it to fail to insure an environment for Native American employees, students, faculty, or staff, free of such denigrative stereotype depictions in the very day-to-day places where they would be expected to carry on their work within the university itself.

11. For them, the example was troublesome partly because of its asymmetry—even as apparently exhibited in their colleague's own illustration: that it would privilege one offensive kind of group epithet ("white persons" as "racists"?) while not privileging another (Native American peoples as "backward" or as subject to some other denigrative characterization or some equivalently dismissive stereotype). Did their colleagues mean to sug-

colleagues' view of its appropriate treatment was not without some measure of reason, as they felt about several, still different examples other council members put forth.

As one such example, a member of the council asked whether *pedophilia*—a pronounced or even exclusive erotic longing for sexual intimacy with youngsters—was a category of "sexual orientation" the council believed to be indistinguishable in entitlement to be treated with equality of protection from verbal abuse on campus according to the proposed rule? The question went largely unanswered. Several council members stiffened at the question, suspicious of why such a matter was even raised, unless as a snide suggestion aimed actually at them, as gay and lesbian persons (which they were). Was the question raised to draw them out, either to "defend" their own gay or lesbian orientation in front of the council, or otherwise to accept the unstated but implied comparison of themselves with *pedophiles*?

---

gest that the one hostile description (e.g., addressing whites as "racists") was less offensive, or somehow more legitimate (i.e., *more warranted?*) than the other? On what basis might they think so (or did they not regard this as genuinely contestable, though not everyone would be inclined to agree)? Or was it their view, rather, that a properly considered rule will lay down one kind of verbal conduct standard for certain students, faculty, staff, and employees, but a different standard for others whose expressions of animus were simply not to be treated the same way? Possibly. And possibly for a reason. But if so, what kind of rule is this, and how would one expect it to work? May not such a rule seem itself to say that some students (minority students?) are regarded not as being more in the right than others, but merely more pardonable as to their polemical excesses because not really equal after all (on which account they are not to be held to the same expectations of verbal behavior toward others on campus as others are expected to maintain toward them)? But insofar as this were its evident message, would it actually work to support them (as their colleagues obviously intended), or might it merely further undermine them—in so treating their offensive depictions of others as something the university expects others to pass off or ignore? Or were their colleagues suggesting that even if each description may be thought to be equally off the mark, and equally offensive in stigmatizing terms (e.g., whites as "racists"), still, given the status of some students on campus, their outbursts (such as they may be) are far more readily understandable, given the conditions they are unequally made to confront on campus, and, so, ought not be treated the same way. But how does this explanation really help at all?

Similarly, in thinking about a different (but related) example, these council members wondered whether the rule as applied, as their colleagues had it in mind, would likewise mean to exempt from complaint denigrative speech that complains of, that belittles, or that dismissively stereotypes "white male European faculty members" and thereby makes the working environment offensive to them, but not likewise exempt denigrative speech that belittled or that stereotyped women faculty or "faculty persons of color"? If it declines to act in the same way in respect to each, however, how will the university explain its policy and its failure to treat "like complaints" alike? (On the other hand, if it acts with equal vigor so to reach both kinds of belittling verbal conduct equally, whose interests may thereby seem in fact to be more substantially served?)

Unknown to these council members, however, the question was asked by a faculty member interested in testing the council's principle—an anguished faculty member who himself subscribed to pedophile magazines and who lived in terrible dread of having his own orientation discovered. Moreover, he fully believed that the sexual distinctions drawn by others were themselves merely self-serving. He had hoped the council would respond not with silence, but positively to his idea. Inwardly, he was filled with dismay that his question had been treated as some miscarried, or tasteless, out-of-place remark.

One member of the council hesitantly suggested that whether such an orientation would be protected by the verbal conduct rule would perhaps depend, at least partly—perhaps entirely—on "whether the leading national professional psychiatric and psychological organizations still regarded such a person as sexually deviant rather than normal," in which case, he supposed, descriptions of pedophiles as "deviates" "needing treatment," could not be described as expressions of "bigotry," whereas descriptions of gays and lesbians as "deviates" "needing treatment" would be subject to sanction under the rule.[12] But this altogether hapless effort to respond, so to draw some distinction according to how professional psychiatric and psychological organizations happened to classify such things, served only to make the matter that much worse.

But by now it was altogether apparent that this entire line of discussion would prove disastrous if allowed to proceed topic by topic, along any such lines as this. Other members of the council swiftly drew from this exchange the same conclusion as had already become quite obvious to others—that the council could not possibly go on in this way, now to adjudicate what was acceptable for some to say and what was not insofar as it made the environment offensive to others in some particular way. And it could not possibly make a definitive list of essentially forbidden expressions, so to distinguish them from unforbidden expressions, and adequately explain the difference—as it now was at risk of seeming to do. Neither could it possibly provide a suitable guideline list framed in any sufficient way to catch all that should be caught on the one hand (whatever that was), and yet leave untouched everything else, however offensive, appropriately pro-

12. He had in mind, of course, that such organizations had altered their views regarding homosexuality some few decades earlier, no longer regarding such an orientation as abnormal (and thus not a condition one would seek to "treat" as these same organizations previously held), but they had made no similar transition for pedophilia and a number of other sexual interests of a still somewhat more exceptional kind.

tected by an ample academic freedom and an ample campus freedom of speech.

The thing to be done, therefore, was not to give up, but instead to stop with such agreement as could be reached now, so to frame the rule simply, specifically in the terms already proposed in *4TH ALTERNATIVE* RULE I. Beyond this, the council clearly was not the appropriate place to settle anything else. Rather, as actual incidents might arise, consistent with the standard now framed on the face of the proposed rule itself, the appropriate hearing board could sort them out: as complaints might be brought, hearings held, decisions made, and sanctions applied. In brief, the particular application of *4TH ALTERNATIVE* RULE I would be determined under the procedures provided in RULE II.[13]

To be sure, this regime might have its own difficulties, but so much was unavoidable, no matter what the council might do. The assumption should be the practical one that "everyone would know" (or in any event quickly learn) what the "core" of unacceptable verbal conduct was to consist of and why. Nor would it be particularly helpful, it was agreed, for the council, having already framed the rule, to get into "explanations" or provide examples (they might themselves be insulting and misunderstood, or somehow taken the wrong way by some). Obviously, some basic sense of the community would inform the hearing committee; the council was both willing and eager to assume that it would. There was, nearly all agreed, no obvious superior alternative to meet the objections that had been raised than that proposed by *4TH ALTERNATIVE* RULE I. Operating under this reformulation of RULE I, the proper committee, already provided for under RULE II, would decide the appropriate disposition of each actual incident, *according to the metric of the rule itself.* And so the council decided to do.

vi.

In the end, the key to the success in the final formulation and adoption of *4TH ALTERNATIVE* RULE I was the consensus on basic principle. Its basic principle was really quite clear, was it not?[14] And much unlike original RULE I (which, the council pointed out to its

13. RULE II: "Any member of the university community who engages in any verbal conduct contrary to Rule I shall be subject to suspension, dismissal, or other appropriate sanction as the Committee on Offensive Verbal Conduct shall decide."

14. Assuming one thinks so, how might one best express it? (And if one thinks it is somehow lacking in some particular, what different principle might one prefer to put in its stead?)

own satisfaction, had been squarely defeated), *4TH ALTERNATIVE* RULE I refused to make offensiveness *per se* the test. *4TH ALTERNATIVE* RULE I was both different from and far better than original RULE I because it was neither overinclusive nor underinclusive of properly sanctionable verbal conduct according to its own terms. Unless one's verbal conduct was *both* offensive *and also* of a nature reflecting an improper *and* unreasonable attitude toward others, as the rule declared, then one's verbal conduct remained outside the reach of the rule, i.e., it would not be subject to complaint and to sanction. This struck the council as being exactly as it should be.

As thus amended and perfected, the rule was no longer underinclusive because it would now treat "all like cases alike," so to apply equally, for instance, whether the object of one's denigration were some mental characteristic of others (e.g., "retards"), some physical characteristic ("cripples"), some sexual orientation characteristic ("faggots"), or some other characteristic including (but now no longer limited to) race, religion, or gender. Rather, expressions of bigoted animus calculated to diminish the sense of self worth of others on campus, and to make the environment on campus[15] a humiliating or oppressive place for them, would be reached whether of a sexual nature or some other nature. In that way, the amendment to the rule represented an obvious gain.

Yet, the rule was not overinclusive, for it was no longer driven by the same censorship standard of original RULE I. *That* standard, such as it was, and now rejected, was that the mere offensive, denigrative, belittling, or discriminatory character of one's speech (i.e., speech willfully designed to express a harsh or a negative view of others or of their practices), would, on that account, make it subject to complaint. But under the new rule, while this characteristic of one's speech was retained as a necessary condition, it would not be a sufficient condition. Specifically, that one's verbal conduct *might* express an animus toward others *and* be offensive to them, or that it belittled them, their beliefs, or their attitudes, or their values in some way, would *not* render it subject to complaint unless, in addition to being offensive in the manner or substance of its content (and whether or not it was of a sexual nature), *it also reflected an improper and unreasonable attitude according to the common standard of the university*—and all of this according to the specific terms of the rule itself.

15. Or some part thereof.

So, to take a clear instance, applying *this* branch of the rule, even "hateful" denigrative expressions about a neo-Nazi student group on campus would be within the realm of protected expression, insofar as such expressions of rejection, based on a shared repugnance regarding neo-Nazis, could *not* be considered "unreasonable" or "improper" for a member of the university community to hold as a view, or to reflect straightforwardly in their speech. That they—the very persons or group(s) targeted by such speech—may feel themselves humiliated by such speech, that they may not like the way they are thus depicted, or that they may believe they are misunderstood, however, is neither here nor there, for surely one has a right to present one's opinions on neo-Nazis, whether neo-Nazis find themselves offended or not.[16] Neo-Nazis are *properly* left to the mercy of the free speech campus,[17] just as others[18] *properly* are not. The whole challenge, of course, is to know how to draw the distinction. The example was, all agreed, an excellent example in serving so well to illustrate the real value of the full terms of the rule.[19]

16. Indeed, what kind of university would it be that had a rule forbidding one to point out what one thinks to be the undesirable traits or qualities of persons of *this* sort (whatever one thinks persons of "this" sort means)?

17. As also might be true, say, of those whose sexual taste may run to children (i.e., *pedophiles*) and similar deservingly disreputable groups, individuals, or beliefs, the impugning of which could not be said to reflect an "improper and unreasonable attitude" according to "the common standard" of the university.

18. I.e., all those protected by the proposed rule.

19. That certain verbal conduct offending men on campus (e.g., reiterated descriptions depicting them as lascivious, to be watched out for as prone to sexual exploitation, to violence, to rape, and to the subordination of women) would likewise *not* be subject to the rule, most on the council thought likely as well (unless one were prepared to declare that such negative depictions, cautions, and warnings (about men) would be held to reflect to an "unreasonable" and "improper" attitude, which they thought unlikely—for who is prepared so to insist that they do?). That such depictions may be resented by many men, or rejected as false by at least some men, as well as stigmatizing of them, as well as offensive, is neither here nor there. For again, this rule avoids making these matters (the alleged felt falseness of the depiction, the resentment of those depicted, or its offensiveness to some person or some group) a sufficient ground, as it rightly should. But, in contrast with these cases, on the other hand, perhaps most (perhaps all) expressions of animus or belittlement of gay or lesbian persons (though not necessarily of pedophiles), or of women (though not necessarily of men), or of most racial groups (though not necessarily of whites), when carried into offensive words or graphics on campus, would be subject to complaint and to definite sanction under RULE II—reflecting (as they surely would be held so to reflect) an "improper" as well as an "unreasonable" attitude according to the metric of the rule. On all such matters, the rule is fully equal to the demands made upon it according to its own terms: the rule takes suitable care to identify the proper framework for correct judgment—not the framework of what "outsiders" think, but what "the university" thinks on each of these matters ("the common standard of the university" is the standard made to count). What could be more appropriate than this, in framing a speech code for the university, neither overinclusive nor yet underinclusive of university-sanctionable speech?

Those terms were crafted with care so to provide the most honest statement of what the rule—or any (i.e., every) rule of just this sort—actually represents in the end. The council agreed this was so, and shortly thereafter likewise agreed it was time to adjourn. First, however, the two salutary rules, *4TH ALTERNATIVE* RULE I and RULE II, were approved to the accompaniment of two cheers for a better campus environment, for academic freedom, and for the due protection of an appropriate freedom of speech. And only then did the members of the council file out from the room in which they had met.[20]

20. . . . Except for a small lingering group off in one corner—who thought they caught a slight whiff of diesel fumes, and a slight sound, as of tanks clanking, as in some far away deserted Square.